

CHALFONT COMMUNICATIONS

IBLA 87-637

Decided April 13, 1989

Appeal from a decision of the California Desert District Manager, Bureau of Land Management, determining the fair market rental of communication site right-of-way CA 8349.

Affirmed.

1. Appraisals--Communication Sites--Federal Land Policy and Management Act of 1976: Rights-of-Way

An appraisal of fair market rental value for a communication site right-of-way will not be set aside on appeal if an appellant fails to show error in the appraisal methods used or fails to show by convincing evidence that the charges are excessive. In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal.

2. Communication Sites--Federal Land Policy and Management Act of 1976: Rights-of-Way

Where there are multiple users of the same communication site, each user is individually responsible for the fair market rental value of the authorized use of the site.

APPEARANCES: Lee M. Gopadze, Palm Desert, California, for Chalfont Communications.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Chalfont Communications (Chalfont) appeals from a decision by the California Desert District Manager, Bureau of Land Management (BLM), establishing the fair market rental value for communication site right-of-way CA 8349 at \$7,000 per year. 1/

1/ The copy of the decision in the case file is undated. The certified mail return receipt card shows that Chalfont received the decision on June 3, 1987.

BLM issued communication site right-of-way CA 8349, effective June 22, 1982, for a period of 30 years for an area 121.81 by 100 feet located on North Indio Hill in the NE 1/4 NW 1/4 sec. 26, T. 45 S., R. 7 E., San Bernardino Meridian, California. BLM stated in the right-of-way grant that annual rental was estimated at \$2,000, "subject to adjustment by a formal appraisal." In an appraisal report dated July 30, 1986, the BLM appraiser concluded that, based on a comparison of comparable communication sites, fair market rental for right-of-way CA 8349 should be \$7,000 per year (Appraisal Report at 13). That report served as the basis for BLM's decision.

[1] Pursuant to 43 U.S.C. § 1764(g) (1982), the holder of a right-of-way is required to pay rental annually in advance for the fair market value of the right-of-way when this value is established by an appraisal, although BLM may allow use of a right-of-way prior to a formal appraisal. Jim Doering, 91 IBLA 131, 133 (1986). An appraisal of fair market value for a communication site right-of-way will not be set aside if the appellant fails to show error in the appraisal method used by BLM or fails to show by convincing evidence that the charges are excessive. Denver & Rio Grande Western Railroad Co., 101 IBLA 252, 254 (1988); Glover Communications, Inc., 89 IBLA 276, 277 (1985). In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal may only be rebutted by another appraisal. Denver & Rio Grande Western Railroad Co., *supra*.

In its statement of reasons (SOR), Chalfont charges that the rental required by BLM is excessive. In support of that argument, it points to a finding in the appraisal report that communication site rentals have been increasing at the rate of 10 to 12 percent annually, and argues that the increase from \$2,000 to \$7,000 is "a 350 percent increase" and is, therefore, inconsistent with the report. ^{2/} This assertion is based on a faulty premise, *i.e.*, that the \$2,000 annual rental was, in fact, the fair market rental value in 1982. The \$2,000 annual rental, as stated in the grant, was merely an estimate and was to be effective only until completion of a formal appraisal. See Southern California Gas Co., 81 IBLA 358 (1984). Consequently, we reject appellant's argument that the rental established by BLM is excessive.

The comparable lease method of appraisal, used by BLM in this case, is the preferred method for appraising the fair market rental value of communication sites where there is sufficient comparable rental data. See Southern California Gas Co., *supra*; Mountain States Telephone & Telegraph Co., 79 IBLA 5 (1984). The BLM appraiser considered seven leases in the vicinity of the North Indio Hill site. After reviewing the differences and similarities ^{3/} between those leases and appellant's right-of-way, the appraiser

^{2/} We note that an increase from \$2,000 to \$7,000 is a percentage increase of 250, not 350.

^{3/} The factors used for comparison in the appraisal are size, location, character of the site, site amenities, and electronic versatility. Where appropriate, the rental values were time adjusted.

reached his result regarding the fair market rental value for appellant's right-of-way. Appellant has shown no error in the appraisal methods used by BLM. In the absence of such a showing, a right-of-way holder may rebut the BLM appraisal only by another appraisal. Glover Communications, Inc., *supra*. Appellant has failed to provide an appraisal in rebuttal.

[2] In addition, Chalfont argues that the \$7,000 annual rental for the site should be split equally between itself and Kountry Kable, which received a right-of-way (CA 6888) in 1985 for use of the North Indio Hill site. It is settled that the appraised value of a communication site is not to be prorated among the users of the site. Donald R. Clark, 39 IBLA 182, 190-91 (1979); Circle L, Inc., 36 IBLA 260, 263 (1978). Neither the fact that Kountry Kable has been granted a right-of-way to the North Indio Hill site, nor the possibility of grants to other users, affects the fair market rental value of the site to Chalfont.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

I concur:

James L. Burski
Administrative Judge

